UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

AMERICAN DIRECTIONAL BORING, INC. d/b/a ADB UTILITY CONTRACTORS,)))
Employer/Respondent,)
and LOCAL 2, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO,	Cases 14-CA-27386 14-CA-27570 14-CA-27677
Petitioner/Charging Party.)

PETITIONER/CHARGING PARTY'S OPPOSITION TO RESPONDENT'S MOTION FOR STAY OF PROCEEDINGS PENDING A DETERMINATION BY THE EIGHTH CIRCUIT COURT OF APPEALS ON RESPONDENT'S PETITION FOR WRIT OF PROHIBITION OR MANDAMUS

COMES NOW Local 2, International Brotherhood of Electrical Workers, AFL-CIO (the "Union" or "Local 2") and hereby opposes Respondent American Directional Boring, Inc.'s ("ADB's") motion for stay. In support thereof, Local 2 states as follows:

1. This case is a classic nip in the bud case. During the course of an organizing campaign, ADB, among other things, terminated 13 union supporters, threatened at all-employee speeches to close the plant, solicited the resignation of union supporters, and vowed never to recognize the Union. By Decision dated May 10, 2005, ALJ Benjamin Schlesinger ordered the Employer to cease and desist and reinstate all discriminatees with full back pay. He also issued a *Gissel* bargaining order. A two person group of the Board subsequently affirmed the Decision in its entirety. In particular, it affirmed the *Gissel* bargaining order

despite Respondent's claim and evidence of changed circumstances and the passage of time.

- 2. On June 24, 2010, the Eighth Circuit denied the Board's application for enforcement citing *New Process Steel*. The Board subsequently informed the parties by letter dated July 22, 2010 that it was considering the case on the full record and invited the parties to file supplemental briefs on changed circumstances or alternative remedies within 14 days.
- 3. Respondent now asks the Board to indefinitely stay this matter until the Eighth Circuit can rule on ADB's recently filed petition for writ of prohibition or mandamus. ADB claims in the petition that the Board lacks jurisdiction over this matter.
- 4. Local 2 opposes ADB's request for any stay. First, there should be no substantial disagreement concerning the Board's jurisdiction. Under *New Process Steel*, the two person group of the Board lacked a quorum to issue the decision and order in this matter in the first place and could not have legally reached a determination. Thus, the unfair labor practices at issue remain unresolved by the Board and have never been fully resolved pursuant to Section 10(c), and the Board (now five members) still and now has jurisdiction to resolve them and issue an order. The Eighth's Circuit denial of the Board's application for enforcement is not to the contrary. This judgment did not resolve the unfair labor practices at issue and does not state that the Board lacks jurisdiction to resolve these unresolved unfair labor practices.

- 5. Local 2 also opposes a stay because it will result in further delay. The only issue that ADB raised on the merits of this case to the Eighth Circuit was changed circumstances and the passage of time. It has been over seven years since ADB committed the first ULPs in this case (April 15, 2003) and over six and one-half years since the last termination (November 26, 2003) covered by the ALJ's decision. The Union believes that a bargaining order is still appropriate. However, a stay will result in further delay and gives ADB further argument. It would reward ADB for manufacturing litigation to beat a bargaining order. This undermines the Board's remedial authority. It also harms the Union and employees who desire recognition and the opportunity to bargain better terms and conditions of employment and harms the employees who were terminated and desire reinstatement and backpay.
- 6. ADB claims unspecified unfairness and burden to it in having to submit a supplemental brief while its petition for writ of prohibition is pending. This claimed harm is slight compared to the greater harm to the Union and employees, including the risk of losing the bargaining order and employees having to wait further for reinstatement and receiving backpay. The Union does not consider it a burden to engage in simultaneous litigation. In addition, in taking the parties' supplemental briefs now, the Board can consider this case and issue a decision that can be immediately enforced when the Eighth Circuit issues its opinion on ADB's petition. This is consistent with the agency's purpose of quickly resolving labor disputes and protecting employee rights. Deciding this case now is an economic and fair use of the Board's resources.

WHEREFORE Petitioner/Charging Party IBEW, Local 2 requests the Board to deny ADB's request for a stay, accept the parties' supplemental briefs, and quickly resolve the unfair labor practices at issue and issue a decision and order.

Respectfully submitted,

SCHUCHAT, COOK & WERNER

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was filed electronically with the National Labor Relations Board, Office of the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570 and a true copy of the foregoing was sent by electronic mail this 4th day of August 2010 to the following:

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